EDITOR'S NOTE

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NO. 85-1814

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ROBERT B. EUBANK, PETITIONER
INDIVIDUALLY AND ON BEHALF OF ALL OTHER
SHAREHOLDERS OF LEE LUMBER COMPANY, LTD.

VS.

LEE LUMBER COMPANY, LTD., RESPONDENT

VS.

INTERNATIONAL PAPER COMPANY, RESPONDENT

MOTION OF RESPONDENT, INTERNATIONAL PAPER COMPANY, SEEKING DAMAGES FOR FRIVOLOUS APPLICATION FOR PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAVID I. GARRETT, JR., P. C.
MERWIN M. BRANDON, JR., P. C.
Madison, Garrett, Brandon,
Hamaker, Wilson & Tugwell
1406 Royal Avenue
Monroe, Louisiana 71207
Telephone: (318) 387-9496

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MAY IT PLEASE THE COURT:

International Paper Company, Respondent, through its attorneys of record, respectfully requests this Honorable Court to grant Respondent sanctions, in the form of attorney's fees and/or damages, in accordance with Rule 49.2 of the United States Supreme Court, which provides:

> "When an appeal or petition for Writ of Certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages."

Respondent files this motion simultaneously with its brief in opposition to the Petition for Certiorari, and has addressed in its opposition to the Petition for Certiorari the allegations of the Petitioner.

As set forth in the Ruling of the Honorable Nauman S. Scott, District Judge for the Western District of Louisiana, Alexandria Division, in Civil Action No. 83-2809, (set forth in full in Appendix D to the Petition for Writ of Certiorari), litigation against International Paper Company by Lee Lumber Company, Ltd. and, subsequently, by Robert B. Eubank, individually, and on behalf of the Shareholders of Lee Lumber Company, Ltd., has been long and extensive. Valuable time and money has been wasted and an unnecessary burden has been placed upon the Courts by Petitioner's persistence in relitigating this same dispute.

In his said Ruling, Judge Scott traces the course of the litigation, commencing with the filing of the first lawsuit, Lee I, in the Louisiana State Court on September 18, 1973, Lee II filed in the same Federal District Court below on September 30, 1977 and the Lee III filed in the District Court below on June 9, 1982, each and all of said prior lawsuits resulting in Judgments in favor of International Paper Company against Lee Lumber Company, Ltd. and, subsequently, Robert B. Eubank, individually and in his alleged representative capacity. The Summary Judgments granted by the District Court below in Lee II and Lee III were subsequently affirmed by the Fifth

Circuit Court of Appeals. As noted hereinabove, Judge Scott's Ruling in Lee II is set forth by Petitioner in his Appendix B, together with the affirming Opinion of the Fifth Circuit. Judge Scott's Ruling in Lee III is set forth in Petitioner's Appendix C, together with the affirming Judgment of the Fifth Circuit.

Lee IV, the present litigation, was filed by this Petitioner in the District Court below in an attempt to again relitigate this same, ancient dispute and controversy between the parties. In granting Summary Judgment therein in favor of International Paper Company, holding that prior Judgments in Lee I, Lee II and Lee III are res adjudicata as to any and all claims of Petitioner set forth in Lee IV, Judge Scott characterized Lee IV as an attempt by Petitioner to relitigate this same dispute between the parties. While denying sanctions, in the form of attorney's fees, Judge Scott admonished this Petitioner in no uncertain terms that any future attempt by him to relitigate these matters before the District Court will be filed at the risk of whatever sanctions, (including but not limited to dismissal, and an award of attorney's fees and other damages), deemed appropriate by that Court. In the Summary Judgment granted International Paper Company, Judge Scott's denial of actual sanctions was made subject to his comments set forth in said Ruling. On appeal of Lee IV to the Fifth Circuit Court of Appeals by this Petitioner, International Paper Company requested of the Fifth Circuit, sanctions in the form of attorney's fees, against this Petitioner, based on its position that said appeal by Petitioner to the Fifth Circuit was entirely frivolous and without merit. The Fifth Circuit affirmed the Ruling and Judgment of the District Court below, citing particularly the res adjudicata effect of Lee II and granted to International Paper Company sanctions in the form of attorney's fees, holding that this Petitioner,

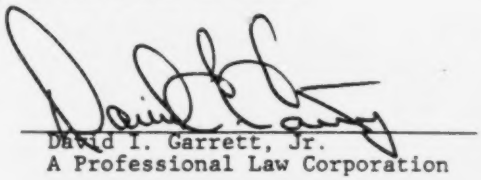
as Appellant therein, had no colorable argument under Louisiana law to support his theory that Lee IV is not precluded by the Judgment rendered in Lee II, noting that the District Court below so held in a prior Opinion. The Fifth Circuit found said appeal completely meritless and granted such sanctions against Petitioner for pressing a frivolous appeal.

The history of this litigation of this same controversy between these same parties now spans a period of almost thirteen years. The expenditure of the time and resources of the Courts has been substantial. Cost in time and expense to International Paper Company has been enormous. It is submitted that there has been an abuse of the judicial process in Lee III, and most certainly in Lee IV, by this Petitioner.

Respondent believes that the Petition for Certiorari to this Honorable Court is simply another step of intentional harassment of Respondent by Petitioner, that it is without merit, frivolous upon its face, has been filed without any reasonable expectation of success and submits that same has greatly multiplied the proceedings herein and has added substantially to this litigation and to the expense of Respondent, International Paper Company.

It is respectfully submitted that Robert B. Eubank, prior to his lodging his present Petition for Certiorari in this Court has been, in Lee IV, both clearly admonished by the District Court below and made subject to grant of sanctions against him by the Fifth Circuit Court of Appeals, for his persistence in attempting to relitigate this same controversy between the parties. In this context, and against this background, it can hardly be said that this Petitioner demonstrated good faith in lodging and pressing this frivolous Petition for Certiorari to this Court.

WHEREFORE, Respondent, International Paper Company, respectfully moves this Honorable Court to award to it attorney's fees and/or costs and/or damages, against Petitioner, for the lodging and pressing of this frivolous Petition for Writ of Certiorari in the amount of Ten Thousand and No/100 Dollars plus all costs of these proceedings.



David I. Garrett, Jr.
A Professional Law Corporation

Merwin M. Brandon, Jr.
A Professional Law Corporation

MADISON, GARRETT, BRANDON,
HAMAKER, WILSON & TUGWELL
1406 Royal Avenue
Monroe, Louisiana 71207

ATTORNEYS FOR RESPONDENT,
INTERNATIONAL PAPER COMPANY

CERTIFICATE OF SERVICE

I, David I. Garrett, Jr., one of the attorneys for International Paper Company, Respondent in these proceedings, being a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 30 day of May 1986, copies of this Motion for Damages, were mailed in duly addressed envelopes, with postage prepaid, to:

Robert B. Eubank
Petitioner
Suite 203
15 Office Park Circle
Birmingham, Alabama 35223

Richard L. Crowell
Crowell, Owens & Tudor
Counsel for Lee Lumber Company, Ltd.
P. O. Box 330
Guaranty Bank & Trust Company Building
Alexandria, Louisiana 71309

I further certify that all parties required to be served have been served.

David I. Garrett, Jr.